

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
 ) CASE NO. CR20-094 RSM  
Plaintiff, )  
 )  
v. )  
 ) ORDER DENYING REQUEST FOR  
GUSTAVO SANDOVAL-AGURCIA, ) EMERGENCY RELEASE  
 )  
Defendant. )  
\_\_\_\_\_ )

Defendant is charged in a multi-defendant case with Conspiracy to Distribute Controlled Substances, to wit, methamphetamine, cocaine and fentanyl. He is also charged with Possession of Methamphetamine, Cocaine and Heroin With Intent to Distribute. A detention order was entered by this Court on August 17, 2020. (Dkt. 53.)

Defendant now moves for temporary release under 18 U.S.C. §3142. (Dkt. 70.) Presumably, the motion is brought under § 3142(i), which allows the Court to permit the temporary release of defendant if “necessary for preparation of the person’s defense or for

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01 another compelling reason”. (*Id.*) The government opposes release. (Dkt. 71.) The motion was  
02 referred by The Honorable Ricardo S. Martinez to the undersigned for decision.

03 Defendant has been charged with a drug offense, the maximum penalty of which is in  
04 excess of ten years. There is therefore a rebuttable presumption against defendant as to both  
05 dangerousness and flight risk, under 18 U.S.C. § 3142(e). Defendant is a native and citizen of  
06 Honduras. He lacks legal status in the United States. He does not have ties to the United States,  
07 and has family in Honduras, including a wife and children. He does not have a stable  
08 employment history and does not have an appropriate release plan. At the time of the detention  
09 hearing, the Court found the record did not effectively rebut the presumption that no condition  
10 or combination of conditions will reasonably assure the appearance of the defendant as required  
11 and the safety of the community.

12 Defendant does not argue these conditions have changed. Rather, he describes the  
13 difficulties in communicating effectively with counsel as a result of restrictions imposed by the  
14 Federal Detention Center (FDC) in order to address health risks posed by the COVID-19  
15 pandemic. As defense counsel notes, § 3142(i) allows the court to order temporary release  
16 under these conditions.

17 Defense counsel describes difficulties with the scheduling of interpreters, shortened  
18 phone calls, increasing demands on available phone lines at the FDC, lengthy isolation in the  
19 quarantine unit with limited opportunity to leave the cell, and difficulties in communicating  
20 with defendant’s family in Honduras. Defense counsel raises concerns about defendant’s  
21 health and mental well-being as a result of this isolation and communication difficulties.

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01 To some extent, the issues identified by defense counsel are inherent in the challenge of  
02 communicating with a non-English speaking client held in detention. Nevertheless, these  
03 issues have clearly been exacerbated by the necessary measures taken by the FDC to protect  
04 the health and safety of inmates, counsel, staff, and others during the COVID-19 pandemic.  
05 The government's response to defendant's request for temporary release indicates defendant  
06 has tested negative for the virus and returned to general population. (Dkt. 71 at 4.) As defense  
07 counsel and the government note, defendant has been able to engage in some, perhaps shorter,  
08 phone conversations with his attorney. In-person attorney-client meetings are again permitted  
09 at the FDC.

10 Defendant, a native and citizen of Honduras, has no ties to this community and no  
11 release plan. He is charged in a large drug conspiracy case and faces the possibility of a  
12 substantial sentence if convicted. Given the risk of nonappearance and risk of danger if  
13 defendant were released into the community, as well as the opportunities for attorney-client  
14 communication described by the government, the Court does not find release appropriate at this  
15 time.

16 The motion is DENIED.

17 DATED this 18th day of September, 2020.

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20 Mary Alice Theiler  
21 United States Magistrate Judge  
22

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